

This letter discusses the taxation of sales of on-line database subscriptions. See 86 Ill. Adm. Code 495.100. (This is a GIL.)

July 31, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 17, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing this Request for a Private Letter Ruling regarding guidance on the requirement to collect and pay Illinois State Sales Tax for our web-based subscription mapping service.

To the best of our knowledge, the Department has not previously ruled on the same or reasonably similar issue as it pertains to our offering defined herein. We have been unable to locate any authority contrary to our views or statement of facts outlined herein. To the best of our knowledge, we are not currently under an audit or involved in any pending litigation with the Illinois Department of Revenue.

Statement of Facts:

ABC is an Illinois limited liability company located in CITY, Illinois. The product our company provides is called ABC Online and can be found at the web domain NAME. It is a web-based system that allows paid subscribers (mostly residential realtors or leasing agents) to generate maps and other marketing materials that are customized with their personal contact information for the purpose of marketing residential real estate. We have only recently begun to offer this product through a web portal.

Previously, we offered and sold the same product as customized computer software (i.e. a cd-rom). Since converting from a cd-rom-based product to a more user-friendly web-based product, we have not substantively changed the terms or format of either the license agreement or the customized reports that we generate for licensees. Once a person agrees to the license/subscription agreement, the person will be able to

generate the custom reports for his/her clients. The license/subscription agreement specifically prohibits the duplication or unauthorized use, sale or transfer of the product. When the product was sold as a cd-rom, we provided replacement copies of lost or damaged software at no charge and allowed customers to make an archival copy of the software. At the end of the term, customers were required to return software unless the license was renewed (the software was also customized with an automatic shut-off at the end of the licensee's specific one-year term, so that the software became unusable unless renewed).

Similarly, now that the product is offered on a web portal through subscriptions, if the subscription is not renewed at the end of the one-year term, access to the report generating features is automatically terminated and no further access is granted unless a new agreement is authorized. Additionally, now that the service is entirely web-based, at no time, and in no form, is a business asset being physically transferred to a subscriber. We also do not make revenue through advertising sponsors; rather, our sole source of revenue is derived through client subscriptions to the service.

Statement of Authorities:

We believe that the sale of our product through a web portal is no different (other than the platform on which it is provided) than its previous sale as a customized computer software product that would qualify for an exemption pursuant to 86 Ill. Admin. Code Sec. 130.1935. None of the license terms or the customization features have substantively changed. Additionally, we believe that the sale of subscriptions to our service does not constitute the transfer of tangible personal property. Rather, we believe it is more akin to the transfer of an intangible, such as information or data that that [sic] is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, which have been specifically deemed by Regulation to be nontaxable transactions.

For the reasons stated above, we are requesting guidance and clarification as to whether we are required to collect Illinois State Sales Tax from subscribers to our service. Your prompt attention to this request in the form of a Private Letter Ruling would be appreciated. In the meantime and until we hear back from you, we have been and will continue to collect sales tax from subscribers.

In support of our request, we have included sample customized reports for each type of report a subscriber can generate from our online service portal, as well as our license/subscription agreement (collectively, the 'Supporting Documents'). Please note that due to the proprietary and copyrighted information contained in the Supporting Documents, we are hereby requesting confidential treatment of all such documents provided in support of this request and request that all Supporting Documents be excluded from any publicly disseminated response to this letter, whether in the form of a Private Letter Ruling or otherwise. We also request that all information specific to our business (name, phone number, address, web address, etc.) be similarly redacted from your response.

If you have any questions regarding this request or if you need any additional information to process this request, please do not hesitate to contact me directly.

DEPARTMENT'S RESPONSE

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have inquired about the taxability of Application Service Provider "ASP" software transactions. Our office has reviewed this issue and declines, at this time, to issue letter rulings in regard to these transactions. We hope the following general information is helpful.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The Use Tax Act, 35 ILCS 105/1 *et seq.*, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. Transactions that do not involve sales of tangible personal property at retail are not subject to these sales taxes.

The Telecommunications Excise Tax Act imposes a tax upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. "Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." Charges for automated information retrieval or data processing are not taxable. See 86 Ill. Adm. Code 495.100, enclosed. The regulation contemplates that charges for access to an on-line computer database fall within this category. As the regulation indicates, charges for the inquiry or access are generally not taxable, but charges, if any, for transmission of the data are generally taxable. If retailers provide both transmission and data processing services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain access to the Internet are not considered to be telecommunications retailers. It is our general understanding that most Internet access providers do not, as part of the billing, charge customers for such line charges, but instead, pay all transmission costs to their telecommunications providers. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items as diverse as e-mail services and access to daily news summaries and to templates that allow customers to create web-sites is generally not subject to the Telecommunications Excise Tax under these circumstances.

However, please note that persons providing customers with the Internet access described above, but who also provide customers the use of a 1-800 service, and separately assess customers with per minute charges for the use of such 1-800 numbers, are considered to be telecommunications retailers. Such retailers incur Telecommunications Excise Tax on charges made for such 1-800 service.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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